

Status: Point in time view as at 29/08/2022.

Changes to legislation: The Disability Assistance for Working Age People (Scotland) Regulations 2022, PART 3 is up to date with all changes known to be in force on or before 19 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULE 2

Regulation 60

PART 3

Transfer from Personal Independence Payment to Adult Disability Payment

Interpretation

7. In this Part of the schedule—

“date of transfer” means the date when a transferring individual’s entitlement to Adult Disability Payment begins by virtue of a determination made under paragraph 9(1),

“relevant individual” means an individual—

- (a) who has an award of Personal Independence Payment who appears to the Scottish Ministers to be likely to be eligible for Adult Disability Payment, and
- (b) who is—
 - (i) ordinarily resident in Scotland, or
 - (ii) someone to whom regulation 15(3) (residence and presence conditions) or 20(2) (persons residing outside the United Kingdom to whom a relevant EU regulation applies) applies,

“sufficient” means a link to Scotland that is sufficiently close that regulations 15(3) or 20(2) would be incompatible with the applicable agreement mentioned in that regulation, if the relevant individual were not entitled to Adult Disability Payment,

“transfer notice” means the notice required by paragraph 8, and

“transferring individual” means [^{F1}an individual] on whom the Scottish Ministers have served a notice of intention to transfer in accordance with paragraph 8.

Textual Amendments

- F1** Words in [sch. 2 para. 7](#) substituted (29.8.2022) by [The Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/217\)](#), [regs. 1\(1\), 19\(13\)\(a\)](#)

Commencement Information

- I1** [Sch. 2 para. 7](#) in force at 21.3.2022, see [reg. 1](#)

Notice of intention to transfer to Adult Disability Payment

8.—(1) The Scottish Ministers are to notify each relevant individual of their intention to transfer that individual’s entitlement to disability assistance from an entitlement to Personal Independence Payment to an entitlement to Adult Disability Payment.

(2) Notice under sub-paragraph (1) must—

- (a) be given in a way that leaves the relevant individual with a record of the information which they can show to, or otherwise share with, others,
- (b) inform the relevant individual that—

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- (i) they have been identified as a relevant individual for the purposes of transfer to Adult Disability Payment,
 - (ii) the Scottish Ministers will make a determination, without receiving an application, to transfer the individual's entitlement to Personal Independence Payment to an entitlement to Adult Disability Payment within a period to be specified within the notice (the individual will be notified when the determination is made and informed about their award and start date of Adult Disability Payment), and
 - (iii) the individual's award of Personal Independence Payment will cease immediately before the award of Adult Disability Payment begins.
- (3) Where a notice under sub-paragraph (1) is given in error where the individual is neither—
- (a) ordinarily resident in Scotland, nor
 - (b) an individual who is habitually resident in an EEA state, Gibraltar or Switzerland and has a genuine and sufficient link to Scotland,

the duty on the Scottish Ministers in paragraph 9(1) does not apply.

(4) Where sub-paragraph (3) applies in respect of an individual and a determination under paragraph 9(1) has not been made, the Scottish Ministers are to notify the individual that the duty on the Scottish Ministers in paragraph 9(1) does not apply.

Commencement Information

I2 Sch. 2 para. 8 in force at 21.3.2022, see **reg. 1**

Determination without application of entitlement to Adult Disability Payment

9.—(1) The Scottish Ministers are to make a determination in respect of a transferring individual, without receiving an application, of that individual's entitlement to Adult Disability Payment.

(2) Entitlement to Adult Disability Payment under a determination under sub-paragraph (1) begins on the date specified in the notice of determination given to the transferring individual in accordance with section 40 of the 2018 Act⁽¹⁾.

(3) Subject to sub-paragraph (4), the determination under sub-paragraph (1) is to be made on the basis of—

- (a) such information as the Scottish Ministers have received from the Secretary of State for Work and Pensions in respect of the transferring individual's entitlement to Personal Independence Payment, and
- (b) any other information available to the Scottish Ministers that appears to them to be relevant.

(4) The determination under sub-paragraph (1) does not need to be made on the basis of the information mentioned in sub-paragraph (3)(b) where—

- (a) the individual—
 - (i) before receiving a notice under paragraph 8(1), reported a change of circumstances to the Secretary of State for Work and Pensions, which has not been taken into account for the individual's entitlement to Personal Independence Payment, or
 - (ii) has, since receiving a notice under paragraph 8(1), notified a change of circumstances to the Scottish Ministers, and

(1) 2018 asp 9.

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(b) following the determination under sub-paragraph (1) a further determination is to be made under paragraph 12.

(5) Subject to paragraph 11, a determination under sub-paragraph (1) must be made on the basis that the transferring individual is entitled to the components and rates of Adult Disability Payment that are equivalent to those components and rates of Personal Independence Payment to which the individual was entitled immediately before the date of transfer.

(6) A determination under sub-paragraph (1)—

- (a) may be made on the assumption that whatever can be discerned about the transferring individual's circumstances from the information mentioned in sub-paragraph (3) remains accurate on the date on which the determination is made,
- (b) notwithstanding the generality of head (a), is to be made on the assumption that the conditions relating to residence and presence set out in regulations 15 to 21 (residence and presence conditions etc.) are satisfied in the individual's case, and
- (c) must be made not later than the end of the period specified within the notice under paragraph 8(1) unless the Scottish Ministers have—
 - (i) good reason to extend that period,
 - (ii) agreed the period for extension with the Secretary of State for Work and Pensions, and
 - (iii) notified the transferring individual of the extension and the reason for it.

Commencement Information

I3 Sch. 2 para. 9 in force at 21.3.2022, see [reg. 1](#)

[^{F2}Effect of determination on entitlement to Personal Independence Payment

10.—(1) Where a determination is made under paragraph 9(1) that the transferring individual is entitled to Adult Disability Payment, the transferring individual's entitlement to Personal Independence Payment will cease on—

- (a) the date their entitlement to Adult Disability Payment begins,
 - (b) where a transferring individual was paid Personal Independence Payment one week in advance and 3 weekly in arrears, the date one week after the date their entitlement to Adult Disability Payment begins, or
 - (c) where paragraph 11 applies, the date their entitlement to Adult Disability Payment would have begun had paragraph 11(2) not applied to set an earlier date of entitlement.
- (2) Where paragraph (1)(b) applies—
- (a) section 77(4) (personal independence payment) of the Welfare Reform Act 2012, and
 - (b) regulation 4(e) of these Regulations (entitlement to other benefits),

do not apply in respect of the first week of entitlement to Adult Disability Payment.]

Textual Amendments

F2 Sch. 2 para. 10 substituted (29.8.2022) by The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/217), regs. 1(1), **19(13)(b)**

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Exceptions to paragraph 9(5)

11.—(1) Where the Scottish Ministers have—

- (a) received information from the Secretary of State for Work and Pensions that the transferring individual is terminally ill in terms of section 82 of the Welfare Reform Act 2012⁽²⁾ immediately before the date of transfer, or
- (b) not received information from the Secretary of State for Work and Pensions that the transferring individual is terminally ill in terms of section 82 of the Welfare Reform Act 2012, but become aware, before they have made a determination under paragraph 9(1), that a transferring individual has a terminal illness in terms of regulation 26(7),

[^{F3}except where sub-paragraph (1A) applies,] the determination made under paragraph 9(1) must be made on the basis that the transferring individual satisfies the conditions for the enhanced rate of both the daily living component and the mobility component of Adult Disability Payment.

[^{F4}(1A) Where the transferring individual reached the relevant age as defined in regulation 22(2) when they became terminally ill under section 82 of the Welfare Reform Act 2012 or in terms of regulation 26(7), the restrictions in sub-paragraph (1B) apply in relation to the determination under paragraph 9(1).

(1B) The restrictions referred to in sub-paragraph (1A) are—

- (a) where the transferring individual was entitled to the mobility component of Personal Independence Payment at the standard rate immediately before the date of transfer, then regardless of whether the award would otherwise have been for the enhanced rate, the Scottish Ministers—
 - (i) may only make an award for the standard rate of that component, and
 - (ii) may only make such an award where the entitlement results from substantially the same condition or conditions in respect of which the mobility component of Personal Independence payment was given,
- (b) where the transferring individual was entitled to the mobility component of Personal Independence Payment at the enhanced rate immediately before the date of transfer, the Scottish Ministers may only award that rate of that component where entitlement results from substantially the same condition or conditions in respect of which the mobility component of Personal Independence Payment was given,
- (c) where the transferring individual was not entitled to the mobility component of Personal Independence Payment immediately before the date of transfer, the Scottish Ministers may not award that component at either the standard or enhanced rate.]

(2) Where sub-paragraph (1) [^{F5}or (1A)] applies—

- (a) paragraphs (4) to (6) of regulation 26 do not apply, and
- (b) the transferring individual's entitlement to Adult Disability Payment will commence on whichever is the later of—
 - (i) the date that these Regulations come into force,
 - (ii) the day that the clinical judgement was made in accordance with regulation 26(7), or
 - (iii) the day one year before the determination was made in accordance with paragraph 9(1).

(2) 2012 c. 5.

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Textual Amendments

- F3** Words in sch. 2 para. 11(1) inserted (29.8.2022) by The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/217), regs. 1(1), **19(13)(c)(i)**
- F4** Sch. 2 para. 11(1A)(1B) inserted (29.8.2022) by The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/217), regs. 1(1), **19(13)(c)(ii)**
- F5** Words in sch. 2 para. 11(2) inserted (29.8.2022) by The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/217), regs. 1(1), **19(13)(c)(iii)**

Commencement Information

- I4** Sch. 2 para. 11 in force at 21.3.2022, see **reg. 1**

Change of Circumstances

12.—(1) The Scottish Ministers must make a determination of an individual’s entitlement to Adult Disability Payment (“the review determination”), without receiving an application, where—

- (a) the individual—
- (i) before receiving a notice under paragraph 8(1), reported a change of circumstances to the Secretary of State for Work and Pensions, which had not been taken into account for the individual’s entitlement to Personal Independence Payment, or
 - (ii) has, since receiving a notice under paragraph 8(1), notified a change of circumstances to the Scottish Ministers,
- (b) the Scottish Ministers have made a determination under paragraph 9(1) (“the transfer determination”), and
- (c) the individual has not requested a re-determination under section 41 of the 2018 Act, or an appeal under section 46 of the 2018 Act, in relation to the transfer determination.

(2) The review determination is to be made as soon as reasonably practicable after the transfer determination.

(3) The change of circumstance notified under sub-paragraph (1)—

- (a) is not to be regarded as relating to the individual’s entitlement to Personal Independence Payment, and
- (b) is to be taken into consideration by the Scottish Ministers in making the review determination.

(4) Where a transferring individual’s entitlement to Adult Disability Payment is determined in the review determination to be at a higher rate than the transfer determination, entitlement will begin—

- (a) if the individual notifies the change—
- (i) within one month of the change occurring, the date when the individual first satisfies the requirements for a higher rate of the [^{F6}daily living] or mobility component,
 - (ii) within more than one month but not more than 13 months of the change occurring, the date when the individual first satisfies the requirements for a higher rate of the [^{F7}daily living] or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month,
 - (iii) in any other case, from the date of notification of the change, or

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(b) if the date under sub-paragraph 4(a) is before these Regulations come into force, the date that these Regulations come into force.

(5) Where a transferring individual's entitlement to Adult Disability Payment is determined in the review determination to be at a lower rate than or at the same rate as awarded by the transfer determination, entitlement under the review determination will take effect on the day that the Scottish Ministers make the review determination.

(6) Where an individual has previously received Personal Independence Payment or Adult Disability Payment for a period and a review determination is subsequently made that the same individual is entitled to Adult Disability Payment at a higher rate for that period by virtue of this paragraph, that individual will be entitled to the difference between the value of entitlement to Adult Disability Payment under the review determination and the value of Personal Independence Payment or Adult Disability Payment to which that individual was previously entitled for that period.

[^{F8}(7) Where the change of circumstance notified under sub-paragraph (1) occurred after the person had reached the relevant age as defined in regulation 22(2), the restrictions in sub-paragraph (8) will apply in relation to the determination under sub-paragraph (1).

(8) The restrictions referred to in sub-paragraph (7) are—

- (a) where the transfer determination awarded the mobility component at the standard rate then, regardless of whether the award would have otherwise been for the enhanced rate, the Scottish Ministers—
 - (i) may only make an award for the standard rate of that component, and
 - (ii) may only make such an award where entitlement results from substantially the same condition or conditions in respect of which the mobility component in the transfer determination was given,
- (b) where the transfer determination awarded the mobility component at the enhanced rate, the Scottish Ministers may only award that rate of that component where entitlement results from substantially the same condition or conditions in respect of which the mobility component in the transfer determination was given,
- (c) where the transfer determination did not include an award of the mobility component, the Scottish Ministers may not award that component at either the standard or enhanced rate.]

Textual Amendments

- F6** Words in sch. 2 para. 12(4)(a)(i) substituted (29.8.2022) by [The Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/217\)](#), regs. 1(1), **19(13)(d)(i)**
- F7** Words in sch. 2 para. 12(4)(a)(ii) substituted (29.8.2022) by [The Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/217\)](#), regs. 1(1), **19(13)(d)(ii)**
- F8** Sch. 2 para. 12(7)(8) inserted (29.8.2022) by [The Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/217\)](#), regs. 1(1), **19(13)(d)(iii)**

Commencement Information

- I5** Sch. 2 para. 12 in force at 21.3.2022, see [reg. 1](#)

Effect of legal detention on payment of the mobility component: 16 and 17 year olds

13.—(1) Sub-paragraph (2) and (3) apply where a transferring individual—

- (a) is aged 16 or 17 on the date of transfer,

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- (b) was in legal detention immediately before the date of transfer, and
- (c) was entitled to the mobility component of Personal Independence Payment immediately before the date of transfer.

(2) Entitlement to the mobility component of Adult Disability Payment of a transferring individual mentioned in sub-paragraph (1) is to begin before the date of the determination under paragraph 9(1) but not before 13 June 2022.

(3) Where the transferring individual has received payment of the mobility component of Personal Independence Payment for any period after the date on which their entitlement to the mobility component of Adult Disability Payment commences under sub-paragraph (2), any payment of Adult Disability Payment to be made for that period is to be reduced by the amount already paid to the transferring individual for the mobility component of Personal Independence Payment for that period.

Commencement Information

I6 Sch. 2 para. 13 in force at 21.3.2022, see [reg. 1](#)

Modification of these Regulations: transferring individuals

14. These Regulations apply to a transferring individual on and after the date of transfer with the following modifications—

- (a) regulation 32 (entitlement beginning while in alternative accommodation) is to be read as if—
 - (i) in paragraph (1) after “begins” there are the words “in terms of Part 3 of schedule 2”, and
 - (ii) in paragraph (2) for “that day” reads “the day on which the individual has been entitled to Adult Disability Payment for 28 days”,
- (b) regulation 35 (when an application is to be treated as made and beginning of entitlement to assistance) is treated as omitted,

[^{F9}(ba) in regulation 36, for sub-paragraph (b), substitute—

- “(b) any subsequent payment—
 - (i) 4 weekly in arrears,
 - (ii) weekly in advance, or
 - (iii) where the Scottish Ministers consider that it would be unjust not to do so, at such intervals as may be specified in the notice of determination.”]

(c) in regulation 45—

- (i) for paragraph (4) substitute—

“(4) Where an individual has previously received Adult Disability Payment or Personal Independence Payment for a period and a determination without application has subsequently been made that the individual is entitled to Adult Disability Payment at a higher rate for that period, the individual will be entitled to the difference between the value of entitlement to Adult Disability Payment under the subsequent determination and the value of Adult Disability Payment or Personal Independence Payment to which that individual was previously entitled for that period.”,
- (ii) where regulation 45(4) as substituted by sub-paragraph (1) applies, for the period between the date when the individual’s entitlement to a higher rate of Adult

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Disability Payment begins and the date of the determination under regulation 46, regulation 4 (entitlement to other benefits) is treated as omitted, and

- (d) where paragraph 11, 12(6) or 13(3) applies, for the period between the date when entitlement to Adult Disability Payment begins and the date of the determination under paragraph 9(1), regulation 4 (entitlement to other benefits) is treated as omitted.

Textual Amendments

- F9** Sch. 2 para. 14(ba) inserted (29.8.2022) by The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/217), regs. 1(1), **19(13)(e)**

Commencement Information

- I7** Sch. 2 para. 14 in force at 21.3.2022, see **reg. 1**

Appointees

15.—(1) A person appointed by the Secretary of State for Work and Pensions under regulation 57 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013⁽³⁾ to receive Personal Independence Payment on behalf of a transferring individual is to be treated on and after the date of transfer as though appointed by the Scottish Ministers to act on behalf of that transferring individual under section 85B of the 2018 Act⁽⁴⁾.

- (2) As soon as reasonably practicable after the date of transfer, the Scottish Ministers must—
- consider whether the conditions for making an appointment in respect of the transferring individual are met (having regard to section 85B(3) of the 2018 Act),
 - consider whether to terminate the appointment that is treated as having been made by virtue of sub-paragraph (1) and terminate it if they consider it appropriate, and
 - if they have terminated an appointment in pursuance of head (b), appoint under section 85B of the 2018 Act another person to act on the transferring individual’s behalf if they consider it appropriate to do so.

Commencement Information

- I8** Sch. 2 para. 15 in force at 21.3.2022, see **reg. 1**

⁽³⁾ S.I. 2013/380, amended by S.I. 2021/804.

⁽⁴⁾ 2018 asp 9. Section 85B was inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

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